DoD Health Information Privacy

Rules Governing Release of Soldier's Protected Health Information to Commanders

Objectives

- Provide information on the Health Insurance Portability & Accountability Act (HIPAA) Privacy Rule military exception.
- Make providers and Commanders aware of their obligations to communicate protected health information when it affects a Soldier's fitness for duty.
- Increase communication between providers, Soldiers, and Commanders.

HIPAA Privacy Rule Purpose

- Assure that individuals' health information is properly protected
- Allow the flow of health information needed to provide health care
- Balance important uses of information and patient privacy
- Use or disclose Protected health information for permitted purposes

Military Exception

- PHI is disclosed to a Soldier's Commander to assure the proper execution of the military mission
- Disclosures are to:
  - determine the Soldier's fitness for duty,
  - determine the Soldier's fitness to perform any particular mission,
  - report on casualties in any military operation, or
  - carry out any other activity IAW applicable military regulations or procedures.

Fitness for Duty

- Determine the soldier’s fitness for duty, including but not limited to the member's compliance with standards and activities carried out under:
  - AR 50-1 (Biological Surety)
  - AR 50-5 (Nuclear Surety)
  - AR 50-6 (Chemical Surety)
  - AR 380-67 (Personnel Security Program)
  - AR 600-9 (The Army Weight Control Program),
  - AR 635-40 (Physical Evaluation for Retention, Retirement, or Separation)
  - AR 40-501 (Standards of Medical Fitness).

Fitness for Mission

- PHI may be used or disclosed to determine the Soldier's fitness to perform any particular mission.
- Examples:
  - To medically administer flying restrictions IAW AR 40-8
  - To report results of physical examinations and profiling IAW AR 40-501, e.g., Soldier is prescribed medication that interferes with performance of duties, such as driving or carrying a weapon
  - To meet deployment standards IAW AR 40-501

Report Casualties

- To report on casualties in any military operation or activity, i.e., AR 600-8-1 (Army Casualty Program)

Carry out any other activity IAW applicable military regulations

- To coordinate routine and emergency care
- To report Command directed mental health evaluations IAW MEDCOM Regulation 40-38
- To initiate Line of Duty (LOD) determinations IAW AR 600-8-4
- To report the Soldier's dental classification
- To respond to queries of accident investigation officers IAW AR 385-10

Carry out any other activity IAW applicable military regulations

- To carry out Soldier Readiness Program and mobilization processing requirements IAW DA Pam 600-8-101
- To review and report Human Immunodeficiency Virus (HIV) IAW AR 600-110
- To carry out preventive medicine activities
- To provide initial and follow-up reports IAW AR 608-18 (The Army Family Advocacy Program)
- Other regulations carrying out any other activity necessary to the proper execution of the mission of the Army

Notifications Within 24 Hours

- OTSG/MEDCOM Policy 10-042, Release of Protected Health Information (PHI) to Unit Command Officials, 30 June 2010.
- A provider will proactively inform a Commander within 24 hours, in the following circumstances:
  - To avert a serious and imminent threat to health or safety of a person, such as suicide, homicide, or other violent action.
  - Prescribed medications that could impair duty performance.
  - Diagnosed with condition that impairs the Soldier's performance of duty or that may harm mission.
  - Soldier is in a special program and normal notification would risk mission accomplishment
  - Entry into a substance abuse treatment program.
  - Command directed mental health evaluation.
  - Soldier injury indicates a safety problem or a battlefield trend.
  - Risk of heat/cold injury.
  - Hospitalization.
  - Seriously ill or very seriously ill.

Minimum Necessary Information

- MTFs must take reasonable steps to limit the disclosure of PHI to the **minimum necessary to accomplish the intended purpose**
- The Minimum Necessary rule does **not** apply to the following:
  - Disclosures to or requests by a health care provider for treatment, payment, or healthcare operations purposes
  - Disclosures to the individual who is the subject of the information
  - Uses or disclosures made at the request of an individual
  - Uses or disclosures that are required by other laws

Disclosure to Command Authorities

- Medical conditions that do not affect the Soldier's fitness for duty/mission or are not necessary to assure the proper execution of the military mission are not provided to the unit
  - Commanders would not be advised if a Soldier was prescribed birth control medication
  - Commanders would not be advised of a Soldier’s self-referral to mental health

WTU Special Case

- **Warrior Transition Units (WTUs) are a special case**
  - Have access to Soldier PHI without an authorization due to nature of mission.
  - Focus solely on the care, treatment, & compassionate disposition of its Soldiers.

- Using PHI in a WTU is considered treatment and/or care coordination (healthcare operations). (See, DoD 6025.18-R, C3.2.3.1, C4.1, DL1.1.17.1.1, and DL1.1.13.1)

DoD Policy – Behavioral Health

- DoD Directive-Type Memorandum 2009-006 – Revising Command Notification Requirements to Dispel Stigma in Providing Mental Health Care to Military Personnel. (2 July 2009)
- Health care providers shall balance notification of a member's commander with operational risk management
- Health care providers provide the minimum amount of information necessary

DoD Policy – Behavioral Health

- Health care providers will notify a commander when a member obtains mental health services in the following circumstances:
  - **Harm to Self**: The provider believes there is a serious risk of self-harm by the member.
  - **Harm to Others**: The provider believes there is a serious risk of harm to others. This includes any disclosures concerning child abuse or domestic violence.
  - **Harm to Mission**: The provider believes there is a serious risk of harm to a specific military operational mission to include cognitive deficits that could result in inadequate judgment

DoD Policy – Behavioral Health

- Health care providers will notify a commander when a member obtains mental health services in the following circumstances:
  - **Special Personnel**: The member is under the Personnel Reliability Program or is in a position that has been pre-identified by Service regulation or the command as having mission responsibilities of such potential sensitivity or urgency that normal notification standards would significantly risk mission accomplishment.
  - **Inpatient Care.** The member is admitted or discharged from any inpatient mental health or substance abuse treatment facility.
  - **Acute Medical Conditions Interfering With Duty**: The member is experiencing an acute mental health condition or acute medical regimen that impairs his/her ability to perform his/her duties.
  - **Substance Abuse Treatment Program**: The member has entered into a formal outpatient or inpatient treatment program.
  - **Command-Directed Mental Health Evaluation**: The mental health services are obtained as a result of a command-directed mental health evaluation consistent with DoD Instruction 6490.4.

Implementing Instructions

- Provider and Soldier – Provider will discuss with soldier current medical condition and why it must be reported to the Commander.
- Provider and Commander – Discuss all patient care, to include diagnosis, treatment options and prognosis. This will open line of communication between provider and Commander.
- Commander to Provider – Discuss the impact the diagnosis may have on current missions, input will then be given by provider as to how current treatment may be altered to better help with the mission.

Disclosure to Command Authorities

- Commander may request information using DA Form 4254
- Telephone requests from units not connected with a regulatory command management program:
  - MTF authenticates authority of requester; must include at least requester's name, official position, social security number
  - MTF authenticates reason for request; requests should pertain only to the Soldier's general health status, adherence with scheduled appointments, profile status, and medical readiness requirements.
- If use is not by Commander personally, the Commander must designate user in writing
- Psychotherapy notes may not be released without patient authorization
- MTFs must account for disclosures using tracking system
- SJA arbitrates dispute between Commander & MTF
- Contact MTF HIPAA Privacy Officer or PAD for questions